THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20709 OF 2006

DATED 3rd NOVEMBER, 2006

BETWEEN

Annam Kamala Devi

… Petitioner

and

The Commissioner of Appeals, O/o Commissioner of Land Administration, Andhra Pradesh, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20709 OF 2006

ORDER:

This writ petition is filed challenging the order, dated 04.07.2005 passed by the first respondent in exercise of powers under Section 9(3) of the A.P.(Scheduled Areas Ryotwari Settlement) Regulation, 1970 (hereafter called, Regulation), whereunder the first respondent confirmed the order of the second respondent, namely, Director of Settlements, in proceedings, dated 26.09.2002, wherein the second respondent dismissed an appeal filed by the petitioner as time barred.

The petitioner allegedly purchased the Government land admeasuring Acs.33.77 cents in O.S.Nos.65, 66 and 67/12 situated at Charla village in Khammam District from Eluru Venkataswamy (pattadar) under registered sale deed, dated 02.11.1953. Subsequently, she sold an extent of Acs.4.12 cents in 1965 to 1969 under different sale deeds. By reason of which, she was allegedly in possession of land before Acs.29.65 cents. She filed a claim petition before the settlement officer under Section 7(1) of the Regulation for grant of ryotwari patta. She was granted patta for an extent of Acs.23.28 cents. But to an extent of Acs.5.72 cents, patta was not granted by the settlement officer on the ground that an extent of Acs.5.12 cents is private tank and an extent of Acs.0.60 cents is a tank bund. The said land was registered as private tank in case No.7288, dated 03.06.1982. In September, 1989, Revenue officials initiated steps to evict the petitioner from the land registered as private tank as settlement officer did not grant patta to her. Therefore, she filed revision petition under Section 4(3) of the Regulation before the second respondent on 10.10.1989 feeling aggrieved by the order of the Settlement Officer in dropping the proceedings insofar as Acs.5.72 cents is concerned. Second respondent dismissed the revision petition on 28.01.1998 on the ground that the petitioner ought to have filed an appeal under Section 9(3) of the Regulation. Aggrieved by the said order, the petitioner filed appeal under Section 9(3) of the Regulation before the first respondent. The same was dismissed on

02.09.2000 by the first respondent observing that the petitioner ought to have filed an appeal under Section 9(3) of the Regulation within sixty days from the date of communication of the order of the settlement officer, the third respondent herein. The petitioner then filed an appeal under Section 9(3) of the Regulation before the second respondent along with an application under Sections 5 and 14 of the Limitation Act, 1963, seeking condonation of delay of seven years five months twenty-six days. The same was dismissed on 26.09.2002 as time barred, against which the petitioner approached the first respondent under Section 9(3) of the Regulation, which is again rejected by the impugned order.

Learned counsel for the petitioner submits that when the petitioner approached the settlement officer for grant of ryotwari patta for Acs.29.65 cents, he granted patta for an extent of Acs.23.28 cents but did not either grant or refuse patta for land admeasuring Acs.5.12 cents (excluding Acs.0.60 cents tank bund) but only observed that the proceedings for such extent is dropped. Under Section 9(2) of the Regulation, it is incumbent on the part of the settlement officer either to grant or refuse and he has no such power to drop the proceedings. For this reason, an appeal would not lie under Section 9(3) of the Regulation, and therefore, the petitioner preferred a revision under Section 4(3) of the Regulation. As the matter was moving from second respondent to first respondent, for no fault of the petitioner, the petitioner ultimately preferred an appeal under Section 9(3) of the Regulation before the second respondent seeking condonation of delay of about seven years six months. The respondents 1 and 2 ought to have condoned the delay applying the principles under Sections 5 and 14 of the Limitation Act.

Learned Assistant Government Pleader for Revenue (General-T) while opposing the writ petition points out that the first respondent has considered the matter after verifying the records on merits, and therefore, it does not call for interference. He also points out that the second respondent rejected the petitioner's appeal as time barred on the ground of delay.

The documents filed by the petitioner would show that the petitioner's application for grant of ryotwari patta and for regulation was considered by the third respondent. At the time of such consideration, the petitioner argued that she dug a tank within the boundaries of her land for irrigating her land, and therefore, the land should be treated as ryoti land, after deducting Acs.4.12 cents, which she sold subsequently. The third respondent did not accept this observing that the land to an extent of Acs.5.72 cents is not a ryoti land, and therefore, he dropped the proceedings. This is evident from the order of the

settlement officer, dated 03.06.1982, which reads as under.

…Sri Eluri Venkataswamy was the pattadar for an extent of Ac.33-77 cents in O.S.No.65, 66 and 67/12. He has sold this land to the claimant by Registered Sale Deed dated 02.11.1953 since both the vendors and vendee of the sale deed, are non-tribals. This sale transaction is not void under A.P.LTR Act 1/59 and Agency Divl.Officer, has also held that it is not void under A.P.LTR Act. The total of the schedule land is Ac.33-00 whereas the total of the land purchased by the claimant is Ac.33-77 cents. It can thus be seen that the entire schedule land is the patta land purchased by the claimant. During present survey, 126/1 is shown as tank. The total extent of 126/1 is H. 3-68 A i.e.9-20 cents. S.No.126/1 is correlated with O.S.No.65 and 66. I have verified that adangals for 1376F to 1378/F. which is made available to me. It is shown that an extent of Ac.5-12 cents is the tank bund. So, the total extent the tank is Ac.5-72 cents and an extent of Ac.3-00 is being kept cultivated by tank bed paddy. The claimant has able to establish that the total extent of Ac.5-72 cents is the private tank and it is her patta land. I therefore held that H.2-29A is the private tank of the claimant. Since it is not a ryoti land I drop the proceedings in respect of H.2-29A in S.No.126/1P and order to register as private tank. Thus the claimant has established her claim over S.No.126/1P for an extent of H.1-39A under the proviso of Sec.7(i)r/w.9 of A.P.Reg.2/70.

The claimant has sold an extent of H.1-62A in S.No.127/APIDC, the claimant has the established her claim for the remaining extent i.e.H 7-80A in S.No.127 put under the second proviso of Sec.7(i) r/w.9 of A.P.Reg.2/70.

Sd/-X X X X X X
Settlement Officer,
Venkatapuram Unit.

Seal:

SCHEDULE

District: Khamman Taluk:Nugur Village:Charla

Name of the Claimant	S.No.	Extent H.A.	Remarks
Smt.Annam Kamala Devi, W/o.Sambasiva Rao, R/o.Dammugudem	126/1p	2-29	Proceedings dropped and regd. As private tank
	126/1p	1-39	I

	Claim		
		127	7-88
allowed			

Note: An appeal lies to the Director of Settlements, A.P.Hyderabad against this order within a period of 60 days from the date of receipt of this order.

A bare perusal of the above would show that though the third respondent used the word “drop”, it virtually was a rejection of the claim for patta. As seen from the Schedule, the land was registered as a private tank. The approach of the third respondent in doing so cannot be faulted. Sections 7(1) and 9(1) of the Regulation are relevant and read as under.

7. Lands in which ryot is entitled to ryotwari patta:-

(1) Every ryot in the Scheduled Areas to which this Regulation applies shall be entitled to a ryotwari patta in respect of all cultivable lands which were proper which ought to have been properly included in his holding and which are not been properly included in his holding and which are not lands in respect of which any other person is entitled to a ryotwari patta under any other law for the time being in force in the State relating to grant of ryotwari patta.

Provided that in the case of lands in the estates which have been taken over under the Andhra (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 a person who would be entitled to a ryotwari patta under that Act shall be granted a patta, if the lands have been continuously in the occupation of that person from the notified date;

Provided further that in respect of lands other than those to which a person is entitled to a ryotwari patta under the first proviso, no ryot who is not a member of the Scheduled Tribes shall be entitled to a ryotwari patta in respect of cultivable land unless-

(a) such a person had been in possession or in occupation of the land for a continuous period of not less than eight years immediately before the commencement of this Regulation;

(b) such possession or occupation shall not be void or illegal under the Andhra Pradesh Schedule Areas Land Transfer Regulation, 1959, or any other law for the time being in force.

Explanation:- In this sub-section, the expression

"notified date" shall have the meaning assigned to it in clause (10) of Section 2 of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948.

9. Grant of patta:-

(1) The Settlement Officer shall inquire into the nature and history of all lands in respect of which ryotwari patta is claimed under Section 7 and decide in respect of which lands the claim should be allowed and the persons who are entitled to ryotwari patta;

Under Section 7(1) of the Regulation, every ryot would be entitled to a ryotwari patta in respect of all cultivable lands. As per Section 9 of the Regulation, the settlement officer has to enquire into the nature and history of all lands before grant of ryotwari patta. Hence, a person in possession of land in scheduled area is entitled to ryotwari patta only in respect of land, which is cultivable. Even according to the petitioner, she dug a tank in her land. By no stretch of imagination, the private tank can be treated as cultivable land. Therefore, when the third respondent dropped the proceedings and registered the land admeasuring Acs.5.72 cents (including tank bund) as private tank, in effect, the third respondent rejected the claim for ryotwari patta. This is in accordance with the sections 7(1) read with 9(1) of the Regulation. What ever be the reason, when the matter ultimately reached the first respondent, it was noticed that against the order of the second respondent, dated 28.01.1998, dismissing purported revision under Section 4(3) of the Regulation, the petitioner preferred an appeal under Section 9(3) of the Regulation before the first respondent. The same was rejected on 02.09.2000. It appears against the said order, the petitioner preferred W.P.No.2212 of 2001. This Court dismissed the same on 12.02.2001. This only shows that the order of the settlement officer as confirmed by the respondents 2 and 1, has become final and repeated revisions/appeals by the petitioner are not warranted. Further, as observed by the first respondent, the petitioner did not produce any additional documentary evidence to establish her title over the land registered as private tank, and therefore, the order of the first respondent is not vitiated by any error warranting a writ of certiorari to quash the same. The first respondent passed orders on 04.07.2005 and this writ petition is filed on 28.09.2006 after more than a year and explanation for the delay is not coming forth from the petitioner.

In the result, for the above reasons, the writ petition is misconceived and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

.11.2006.
pln